WPP-47 / 2009-2011

ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೪೬	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಡಿಸೆಂಬರ್ ೨೨, ೨೦೧೧, (ಪುಷ್ಯ ೧, ಶಕ ವರ್ಷ ೧೯೩೩)	ಸಂಚಿಕೆ ೫೦

ಭಾಗ – ೪

ಕೇಂದ್ರದ ವಿಧೇಯಕಗಳು ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ಕೇಂದ್ರದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರದ ಸರ್ಕಾರದವರು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ಶಾಸನಬದ್ಧ ಆದೇಶಗಳು ಮತ್ತು ರಾಷ್ಟ್ರಪತಿಯವರಿಂದ ರಚಿತವಾಗಿ ರಾಜ್ಯ ಸರ್ಕಾರದವರಿಂದ ಪುನಃ ಪ್ರಕಟವಾದ ಆದೇಶಗಳು

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

NOTIFICATION

Dated: 5th August, 2011

14 Shravana, 1933 (Saka)

No.82/KT-LA/(1/2008)/2011 – In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order of the High Court of Karnataka dated 15th April, 2011 in Election Petition No 1 of 2008.

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 15th day of April, 2011

BEFORE

THE HON'BLE MR. JUSTICE V.G. SABHAHIT

E. P. No.1/2008

BETWEEN

MOHAN KRISHNA SHETTY,
AGED ABOUT 55 YEARS,
S/O KRISHNA SHETTY,
'SAHANA', NELLIKERI,
KUMTA, UTTARA KANNADA DISTRICT

SINCE DECEASED SUBSTITUTED
AS PER COURT ORDER DATED 22-01-2010 BY

SMT. SHARADHA SHETTY,
W/O MOHAN SHETTY,
AGED ABOUT 46 YEARS,
OCC: BUSINESS,
R/O 'SAHANA', NELLIKERI,
KUMATA, UTTAR KANNADA DISTRICT ... PETITIONER

(BY SRI. JAYAKUMAR S. PATIL, SENIOR ADVOCATE FOR SRI R.G. HEGDE ADVOCATE)

AND:

1. DINAKAR KESHAV SHETTY
   AGE : MAJOR
   KOPPALAKARVADI, KUMTA, UTTARA KANNADA DISTRICT

2. G. NATHKUMAR GOUDA,
   AGE : MAJOR, MELINAKERI,
   P.O. GOKARNA, KUMTA TALUK

3. SHASHIBHUSHAN HEGDE,
   AGE : MAJOR, 294/5,
   OLD FISH MARKET ROAD,
   KUMTA, UTTARA KANNADA DISTRICT

4. GANESH GANAPATHI HEGDE,
   AGE : MAJOR, MATHRUCHAYA,
   BEHIND CANARA HEALTH CARE CENTRE,
   BAGGON, KUMTA TALUK

5. TIPPAYYA NAGAPPA NAYAKA,
   AGE : MAJOR, MATHOSHRI,
   KALABAGA, KUMTA TALUK

6. BANDARI SADANANDA ANNAPPA,
   AGE : MAJOR, KASABA,
   KARKIKODI, HONNAVAR TALUK

7. SHET SAVITRI SHRIDHAR,
   AGE : MAJOR, HALE HERAVATTA,
   KALABAGA POST, KUMTA TALUK

8. THE RETURNING OFFICER,
   78-KUMTA ASSEMBLY CONSTITUENCY AND
   THE ASSISTANT COMMISSIONER ,
   KUMTA DIVISION, KUMTA,
   UTTARA KANNADA DISTRICT … (DELETED VIDE ORDER DATED : 09-04-2010)

9. THE DISTRICT ELECTION OFFICER,
   AND THE DEPUTY COMMISSIONER,
   UTTARA KANNADA DISTRICT, KARWAR (DELETED VIDE ORDER DATED : 09-04-2010)

... RESPONDENTS

(RESPONDENTS 8 & 9 ARE DELETED V/O DATED 09-04-2010)

(BY SRI NANJUNDA REDDY, SR. ADVOCATE FOR

SRI VISHNU D. BHAT, ADV. FOR R1,

DIWAKAR & ASSTS. ADV., FOR R3,

R2, R4 TO R7 ARE SERVED R8 AND R9 ARE DELETED

AS PER THE COURT ORDER DATED 12-04-2010)

THIS ELECTION PETITION IS FILED U/S 81 OF THE REPRESENTATION OF PEOPLE ACT, 1951 BY THE PETITIONER - CANDIDATE TO THE KUMTA ELECTION, TO THE KARNATAKA LEGISLATIVE ASSEMBLY FROM 78-KUMTA LEGISLATIVE ASSEMBLY CONSTITUENCY AT THE ELECTION HELD ON 16-05-2008 PRAYING TO

(i) DECLARE THAT THE DECLARATION MADE BY RETURNING OFFICER, AS CONTAINED IN ANNEXURE - 'A' DECLARING THE FIRST RESPONDENT AS THE RETURNED CANDIDATE, AS VOID ON GROUND OF SEC 100 (d) (iii) AND (iv) OF REPRESENTATION OF THE PEOPLES ACT, 1951 AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY SABHAHIT J, MADE THE FOLLOWING:

ORDER

This petition is filed under Section 81 of the Representation of the People Act, 1951, (hereinafter called **'the Act')** challenging the election of respondent No.1 to the Kumta Legislative Assembly Constituency -78, Uttara Kannada District (hereinafter called **'the Kumta Constituency')** seeking for the following reliefs: -

"I. Declare that the declaration made by the Returning Officer, as contained in Annexure 'A' declaring the first respondent as the returned candidate, as void on ground of Section 100(d)(iii) and (iv) of Representation of the People Act, 1951.

II. Order for recounting of votes polled at the elections held on 16.05.2008, 78 - Kumta Assembly Constituency of Legislative Assembly of Karnataka.

Ill. Declare the petitioner as the returned candidate, in case he polls the maximum number of votes among the contesting candidates after recounting as per Section 101(a) of Representation of the People Act, 1951.

IV. Take into account the tendered ballot papers in favour of the petitioner in whose favour it was cast by excluding the vote initially cast by the person other than the genuine voter from the number of votes of the candidate in whose favour it was cast.

V. Grant such other relief or reliefs that this Hon'ble Court may deem fit proper in the circumstances of the case and in the interest of justice.

2. During the pendency of the Election Petition, the original petitioner died on 29-12-2008 and a notification was issued and Smt. Sharada, the wife of the original petitioner and a voter from the Kumta constituency, made an application for continuing the proceedings and the said application for substitution was allowed and applicants were permitted to continue the proceedings as per the order dated 22-01-2010.

3. It is averred in the petition that the elections were held for the Karnataka Legislative Assembly in three stages in the month of May 2008. Kumta Constituency was meant for General Category. The original petitioner and respondents 1 to 7 were the contesting candidates from 78-Kumta Constituency at the elections held on 16-05-2008. The original petitioner was contesting the election on the ticket issued by the National Congress party. Respondent No.1 contested the election on the ticket issued by the Janata Dal (secular). Respondent No.2 was contesting election from Bahujan Samajawadi Party ticket and other respondents represented the various parties and respondents 7 and 8 contested as independent candidates. Respondent No.8 was the Returning Officer entrusted with the duties and responsibilities of conducting the aforesaid election. Respondent No.9 was the District Election Officer in Uttara Kannada, Karwar, who was vested with the power of conduct of elections in Uttara Kannada district, within whose jurisdiction, Kumta constituency is situated. As per the calendar of events, the last date for filing of nomination paper was 24-04-2008 and the last date for Scrutiny was 30.04.2008 and the last date for withdrawal was 02.05.2008.

The original petitioner filed his nomination on 28.04.2008. The nomination of the original petitioner and respondents 1 to 7 were validly accepted and consequently, they contested the elections. The date for polling was fixed on 16.05.2008 and the date for counting of votes was fixed on 25.05.2008. As per the schedule, polling took place on 16.05.2008 and counting of votes took place on 25.05.2008. The original petitioner secured 30772 votes and the first respondent secured 30792 votes and the first respondent won the election with a narrow margin of 20 votes. Accordingly, a declaration was issued by respondent No.8 as per Annexure 'A' to the Election petition. It is averred that the Returning Officer did not comply with the provisions of Section 38 of the Act read with Rule 10(1) of the Conduct of Election Rules, 1961 (hereinafter called **'the Rules').** The list of the contesting candidates was not prepared by the Returning Officer in accordance with Form 7A and the ballot paper was not prepared by the Returning Officer in accordance with Rule 30(2) read with Rule 10 of the Rules. The original petitioner was contesting the election on the ticket of the National Party and the first respondent was contesting the election from a party, which is not a national party recognized from the Election Commission. Therefore, the name of the original petitioner ought to have been shown at Sl. No.1. However, the name of the first respondent was shown at SI. No.1 and the same has prejudicially affected the original petitioner's election.

4. It is further averred in the Election petition that the Electronic Voting Machines (hereinafter referred to as **'the EVMs'**) were used on the date of polling and the counting arrangement for all the assembly constituencies of Uttara Kannada District was made at the campus of Dr. A. V. Baliga Arts and Science College, Kumta, on 25.05.2008. In the counting hall of Kumta constituency, tables were arranged for the purpose of counting and counting of votes for Kumta constituency started at 8 A.M. on 25.05.2008. The box containing postal ballot could not be opened as the Returning Officer had lost the key of the box containing postal ballot. Then the Returning Officer rushed for counting of votes recorded in voting machines and arranged for distribution of control units of EVMs., on various tables. The counting staff was totally confused and the counting agents of the candidates were not able to make out as to what was happening. It is averred that the counting agents were not allowed to inspect the outer strip seal, the special tag, papers seals which had been affixed on the carrying case and the control unit of EVMs., to satisfy that the seals were intact. The Returning Officer broke open the box containing postal ballots as the key of the box containing the postal ballot was lost by him. The Returning Officer did not count the total number of votes received by post even after opening the ballot box. There was no proper arrangement in the counting hall. Though there were about 14 counting tables, the Returning Officer had made arrangement for two counting agents. The original petitioner had about 16 counting agents. Hence, it was impossible for all the agents to sit and oversee the counting of votes. Therefore, some of the agents of other candidates started moving in the counting hall. The counting hall was overcrowded and though objection was raised by one of the counting agent of the original petitioner regarding the method of counting contrary to the Rules and the sitting arrangements, the same was not entertained by the Returning Officer. It is further averred that the Returning Officer did not make any separate arrangement for counting of postal ballot papers received. Even before counting of postal ballot papers, the counting of votes from EVMs., were started. The Returning officer did counting of postal ballots on his small table by himself in addition to supervising over 14 tables arranged for counting votes from EVMs, which created confusion. Since the table of the Returning officer was very small, counting of postal ballot papers was done hurriedly with 10 to 12 staff rushing to the table of the Returning Officer at a time. The Returning Officer used to proceed to announce the votes counted at each round leaving the counting of postal ballot papers abruptly in the middle. As the counting of the postal ballot papers was done haphazardly, the rejected ballot papers were not brought to the notice of the counting agent of the original petitioner. It is also averred that the Returning Officer did not count the total number of the ballot papers received by post. The Returning Officer used to abruptly stop the counting of postal ballot papers to announce the result of each round of counting of votes recorded in EVM. Hence, there was total confusion in the counting hall. The Returning Officer did not bring to the notice of the counting agent of the original petitioner regarding the reasons for rejecting the postal ballot papers. The Returning Officer informed the counting agent of the original petitioner that 39 postal ballot papers were rejected at the time of counting. However, in the final declaration, the number of rejected postal ballot papers was shown as 227. There was discrepancy in the postal ballot papers received and the votes counted. About 50 ballot papers containing the votes in favour of the original petitioner were not counted by respondent No.8 and were included in the rejected postal ballot papers, without any reason. Some of the postal ballot papers in which votes were

given to the original petitioner were not counted by respondent No.8. Thus, had there been accuracy and proper counting of votes received through post by respondent No.8, the original petitioner would have been declared elected.

5. It is further averred in the Election Petition that Sri Monte Fernandes, one of the polling agents of the original petitioner raised objection and he requested for recounting of votes on the ground that there was discrepancy in the counting of postal ballot papers as per Annexure 'C' to the election petiton. The Returning Officer, without giving an opportunity to the aforesaid agent of the original petitioner, proceeded to reject the request of the agent of the original petitioner as per Annexure 'D' to the election petition. The agent of the original petitioner gave another application (Annexure 'E' to the petition) to the Returning Officer - Respondent No.8 in continuation of his earlier application - Annexure 'C' earlier before the results were declared for recounting of the votes and the said application was also rejected by the Returning Officer stating that there was no mistake in counting and proceeded to declare the result of the election and declared the first respondent as having elected from Kumta Constituency. It is averred that there is discrepancy in the votes shown in the General Statistics and Form No.20 in respect of the votes recorded in EVMs. In SI. No.67 of the General Statistics, the total votes polled was shown as 815, whereas in the final result in Form No.20, it was shown as 813. It is further averred in the petition that large number of persons posed themselves as real voters and exercised the votes and thereby prevented the real voters from exercising their votes in the election. About 14 real voters came forward to apply for ballot papers, after other persons had already voted as such voters. After satisfying about the identity of each one of them, the Election Officer allowed them to mark ballot papers (tendered ballot paper). However, the Returning Officer did not take into account the tendered votes in the manner in which it ought to have been taken into account in view of the narrow margin of 20 votes between the original petitioner and respondent no.1 and non-counting of tendered votes has materially affected the result of the original petitioner in the election. It is further averred that as per the grounds urged as referred to above, the original petitioner is entitled to the prayers sought for in the election petition.

6. On application - I.A. 4/2008 filed by respondent No.1, respondent No.8 - Returning Officer, Kumta Constituency and respondent No.9 - District Election Officer and the Deputy Commissioner, Uttara Kannada District, Karwar, were deleted as they were not proper and necessary parties by order dated 09.04.2010.

7. Respondent No.1 filed the written statement. Respondent No.3 though appeared through counsel, he did not file statement of objection and respondents 2, 4 and 7 though served, have not chosen to appear before this Court.

8. It is averred in the statement of objections filed on behalf of respondent No.1 that the election petition filed by the original petitioner is false, frivolous and fails to disclose any cause of action as contemplated under the Act to set aside the election of respondent No.1 and the original petitioner is not entitled to any relief as sought for in the petition. The allegation levelled by the original petitioner in the petition are vague and the whole petition fails to disclose any specific instance of violation of rules by the Returning Officer and wherefore, the petition is liable to be dismissed on the short ground alone. It is further averred that the material facts have not been averred as required under Section 83 of the Act and the petition is devoid of necessary facts as contemplated under Section 83 of the Act. Therefore, it is liable to be dismissed. It is further averred that the original petitioner has alleged that the Returning Officer has committed irregularity in counting the votes cast through postal ballot papers, but, has failed to disclose any specific material irregularity in as much as to how the ballot paper has been rejected and as to what procedure was required to be followed by the Returning officer and as to how the alleged irregular method has affected the outcome of the counting of votes in the election. It is further averred that the list of candidates contesting in the election in the ballot paper has been prepared by the Returning Officer in accordance with the provisions of Rule 30(2) of the Rules and Section 38 of the Act. The averment made in the petition that the name of the original petitioner ought to have been shown at SI. No.1 in the ballot paper is incorrect and contrary to the provisions of Rule 30(2) of the Rules, which stipulates that the names of the candidates shall be arranged on the ballot paper in the same order in which they appear in the list of the contesting candidates.

9. It is further averred in the statement of objections that the Returning Officer had complied with the provisions contained in the Rules relating to the preparation of ballot paper and the publication of contesting parties. Even otherwise, no prejudice is said to have been caused to the original petitioner in the result of the election due to the said preparation of the list of

candidates contesting the election as printed in the ballot papers. It is further averred that the counting of votes for Kumta constituency started at 8 a.m. on 25.05.2008. The entire process of counting was conducted in accordance with the set procedure and no objection or complained was made by any of the candidates or by their agents during the course of counting. There was neither any irregularity nor illegality in the counting of votes and the allegations made in para No.7 of the Election petition regarding the irregularity are imaginary and the same does not reflect factual situation. It is not correct to state that the box containing the postal ballot papers could not be opened as the Returning Officer had lost the key of the said box and immediately, the Returning Officer had rushed for counting of votes recorded in EVMs. It is not the case of the petitioner that any postal ballot received after the counting had started, was also counted. The whole process of counting had been conducted in a fair and peaceful manner in accordance with the procedure contained in the Act and the Rules and there was absolutely no confusion whatsoever either in the minds of counting staff or in the minds of counting agents of the candidates.

10. It is further stated in the objections statement filed by respondent No.1 that all the arrangements had been made by respondent No.8 for sufficient number of counting agents and even as per the statement of the petitioner, about 14 counting tables were arranged in the counting hall and the petitioners had about 16 counting agents. Therefore, it cannot be said that the counting agents of the original petitioner had no opportunity to observe any defect or infirmity while the counting process was on. None of the counting agents of the original petitioner had raised any objection at any of the tables during counting and the allegations regarding the irregularity in counting the postal ballot papers is without any substance. The allegations made in para 8 of the election petition are vague and are not specific and the averment made in the petition that the Returning Officer did not make any arrangement for counting of postal ballot papers received, is not correct. The averment made in the petition that even before counting of postal ballot papers, the counting of votes from EVMs., had started is not correct. The averment made in the petition with regard to the alleged confusion has no basis as sufficient number of tables were arranged for counting both postal ballots as well as votes recorded in EVMs. It is not correct to state that the Returning Officer used to proceed to announce the votes counted at each round leaving the counting of postal ballots abruptly in the middle. The averment made in the petition to the effect that the rejected postal ballot papers were not brought to the notice of the counting agents of the original petitioner is incorrect. It is further averred that it is denied that the Returning Officer had informed the counting agents of the original petitioner that 39 postal ballot papers were rejected at the time of counting. It is not in dispute that in the final declaration, 227 postal ballot papers were rejected. There was no discrepancy between the postal ballot papers received and the votes counted. The petitioner's statement that about 50 ballot papers containing the votes in favour of the original petitioner were not counted by respondent No.8 and that they were included in the rejected postal ballot papers, without any reason is nothing but imaginary allegation advanced by the petitioner with an intention to have roving enquiry to fish out evidence. There is no basis for the said allegation and postal ballot papers in which votes were cast in favour of the original petitioner were counted by respondent No.8.

11. It is further averred in the statement of objections filed by respondent No.1 that the procedure for counting postal ballot papers has been fully complied with by the Returning Officer and counting of postal ballot papers was done in the presence of the agents of the original petitioner and the averment that counting of ballot papers has not been done properly is baseless. The application for recounting filed by one Mounte Fernandez, election agent of the original petitioner was submitted to the Returning Officer after the counting was over and no application was filed during counting. The demand for recounting was made on the ground that the margin of votes was very low and the same has been rightly rejected by the Returning Officer. It is averred that during the entire process of counting, there was no objection from anybody either with regard to the method of counting or with regard to the rejection or acceptance of votes and counting was done in the presence of the election agents of the original petitioner, respondent No. 1 and other contesting candidates. It is further averred that the Returning Officer had followed a proper procedure as envisaged in Rule 49-P of the Rules in respect of the tendered votes and proviso to Rule 59A(6) of the Rules clearly stipulates that no cover containing tendered ballot shall be opened and no such paper shall be counted. It is averred that no ground is made out for setting aside the election of the first respondent and the averments made in the petition are devoid of merit and merely because the margin of votes by which the first respondent has succeeded in the election is only 20 as compared to the votes secured by the original petitioner, the same would not be a ground to order recounting of votes. No ground is made out for recounting of the votes and accordingly, the first respondent has sought for dismissal of the election petition with costs.

12. Having regard to the above pleadings, the following issues were framed by this Court on 21.11.2008:

"(1) Whether the petitioner proves that the Returning Officer has violated the rules of counting as contained in Rules 52, 66 and in particular Rule 54-A of the Conduct of Election Rules, 1961, by not taking into account valid postal ballot papers and rejecting the postal ballot papers from count without assigning any reason?

(2) Whether the petitioner proves that the conduct of the Returning Officer in not counting the votes in accordance with the Rules has materially violated the result of the election as referred in the election petition?

(3) What order? "

13. On behalf of the election petitioner: Monte Louis Fernandes, an election agent of the original petitioner was examined as PW.1; Vasanth L Naik, the counting agent of the original petitioner has been examined as PW.2; Chandrahasa Hosabu Nayak, the counting agent of the original petitioner has been examined as PW.3 and Smt.Sharada Mohan Shetty, the wife of the original petitioner, who was permitted to continue this petition has been examined as PW.4 and documents Exs. P1 to P7 have been got marked. On behalf of the respondents, Dinakar Keshav Shetty, the first respondent has been examined as RW. 1 and Virupakshi Sadashiv Chougala, who was working as Assistant Commissioner, Kumta Sub-division during May 2008 and the Returning Officer for Kumta constituency has been examined as RW.2.

14. I have heard the learned senior counsel appearing for the petitioner and the learned senior counsel appearing for respondent No. 1 and scrutinized the material on record and appreciated the oral and documentary evidence on record. I answer the above issues as follows:-

Issue No.1	:	in the negative
Issue No.2	:	in the negative
Issue No.3	:	as per the final order for the following

REASONS

15. **Issue No.2** is taken up for consideration first since the same pertains to the breach of the Conduct of Election Rules pertaining to non-preparation of the list of candidates in the ballot papers in accordance with law and non-counting of the tendered votes. It is clear from a perusal of the averments made in the Election petition that all the grounds raised by the petitioner in this case to set aside the election of the first respondent as elected candidate to Kumta constituency are based upon the grounds enumerated in Section 100 of the Representation of the People Act, 1951. The provisions of Section 100(1)(d)(i (iv)) of the Act reads as follows:-

"**100. Grounds for declaring election to be void.-**[(I) Subject to the provisions of sub-section (2) if the High Court is of opinion-

(a) x x x

(b) x x x

(c) x x x

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void. "

It is clear from the provisions of the above said Section that when the petitioner is challenging the election of the first respondent to the Karnataka Legislative Assembly from Kumta Constituency under clause d (iii and iv) of Section 100 of the Act, the petitioner, apart from proving the allegation regarding the breach of the provisions of the Act and the Rules, should also prove that the result of the election in so far as it concerns a returning candidate has been materially affected by such breach of the provisions of the Act or the Rules. Therefore, the burden is upon the petitioner to prove the breach of the provisions of the Act or the Rules and the fact that the said breach has materially affected the result of the election. It is clear from the pleadings in the election petition as already referred to above that according to the petitioner, the list of candidates in the ballot papers was not prepared in accordance with Section 38 of the Act read with Rule 10 of the Rules. According to the averments made in the petition, since the original petitioner belongs to Indian National Congress, which is a national party, his name should have been shown at SI. No.1 in the ballot paper. On the other hand, the name of respondent No.1, who was representing a recognized state party has been shown at SI. No.1 in the ballot paper and this has prejudicially affected the result of the original petitioner in the election. According to the averments made in the written statement as referred to above, the list of candidates, who contested the election has been properly prepared in accordance with the provisions of Sections 18 and 38 and Rule 10(1) of the Rules and the petitioner has failed to prove that the list of candidates was not published in accordance with the provisions of the Act and the Rules as referred to above.

16. PW. 1 - Monte Louis Fernandes, the election agent of the original petitioner has deposed in his examination-in-chief that in the ballot paper published, name of the candidate contesting from Janata Dal was shown at SI. No.1 i.e., the name of Dinakar Shetty was shown at SI. No.1. The name of Mohan Shetty was shown at SI. No.3. The candidates belonging to National Party ought to have been shown first before showing the name of the persons belonging to State party. Since the petitioner's name was shown at SI. No.3 instead of showing at SI. No.1, there was confusion among voters in casting the votes and due to the said mistake committed by showing Mohan Shetty at SI. No.3, he lost the election.

16.1 It is elicited in the cross-examination of PW.1 - Monte Louis Fernandes that he does not know as to whether the name of Dlnakar Shetty was published at SI. No. 1 in the ballot paper during election in 2004. The witness has volunteered that according to his knowledge, the name of Mohan Shetty was the first name during 2004 elections. It is also elicited that after the last date for withdrawal of nomination, each of the candidate whose nomination was valid would be called and informed about the serial number at which his name would be shown in the ballot paper and the symbol that is allotted to him. On the basis of the said information, pamphlets would be published and circulated seeking for votes by the respective candidates and it is not true to suggest that there is no rule that candidate belonging to National party should be shown at SI. No.1 in the ballot paper and that there was no confusion among voters as name of Dinakar Shetty was shown at SI. No.1 and name of Mohan Shetty was shown at SI. No.3 in the ballot paper.

17. PW.2 - Vasanth L. Naik has deposed in his examination-in-chief that in the ballot paper, the name of Dinakar Shetty, who had contested election from Janata Dal party was shown at SI. No.1. The name of Mohan K. Shetty, who had contested the election from Indian National Congress was shown at SI. No.3. The name of Mohan Shetty ought to have been shown at SI. No. 1 as he belongs to National Party and several voters had cast their votes to person at SI.No.1 thinking that the name of Sri Mohan Shetty was at SI. No.1 and they were casting vote for Mohan Shetty.

17.1 It is elicited in the cross-examination of PW.2 - Vasanth L. Naik that he was appointed as Counting agent in respect of 12th and 13th table and it is not true to suggest that during 2004 election, the name of Dinakar Shetty was at SI. No.1 and name of Mohan Shetty was thereafter. The witness has volunteered that the name of Mohan Shetty was shown and

thereafter, witness has volunteered that the name of Mohan Shetty was shown at SI. No.1. It is not true to suggest that there is no rule that candidate belonging to National party should be shown at SI. No. 1 in the ballot paper and that there was no confusion among the voters by showing the name of Dinakar Shetty at SI. No. 1 and name of Mohan Shetty at SI. No.3.

18. PW.3 - Chandrahasa Hosabu Nayak has stated in his evidence that the name of Dinakar Shetty was shown at Sl. No. 1 in the ballot paper and name of Mohan Shetty was shown at SI: No.3 and the voters got confused thinking that name of Mohan Shetty was shown at SI. No. 1 as they wanted to cast their vote for Mohan Shetty, but, under the said mistaken notion, they had cast their vote in favour of the candidate at SI. No. 1 (Dinakar Shetty).

18.1 It is elicited in the cross-examination of PW.3 - Chandrahasa Hosabu Nayak that he was not the counting agent for counting of votes in 2004 election. It is not true to suggest that during 2004 election also, the name of Dinakar Shetty shown at SI. No. 1 and name of Mohan Shetty was shown thereafter. It is not true to suggest that there is no law that the name of candidate belonging to National party should be shown first in the ballot paper and that there was no confusion among the voters for having shown the names of Dinakar Shetty at SI. No.1 and Mohan Shetty at SI. No.3 and that he had deposed falsely that there was confusion among the voters.

19. PW.4 - Sharada Mohan Shetty is the wife of the original election petitioner - Mohan Shetty. She has deposed in her evidence that she has cast her vote in the election held on 16.05.2008 and counting of votes was held on 25.05.2008. Dinakara Shetty's name was shown at SI. No. 1 in the ballot papers and Mohan Shetty' s name was shown at SI.No.3. Mohan Shetty ' s name ought to have been shown at SI. No.1. There was confusion among voters i.e., the voters thinking that they were casting their votes for Mohan Shetty, had cast their votes in favour of Dinakara Shetty, whose name was placed at SI. No.1 in the ballot paper.

19.1 It is elicited in the cross-examination of PW.4 - Sharada Mohan Shetty that after the death of Mohan Shetty, she has come on record. In 2004 election, the name of Mohan Shetty had been shown at Sl. No. 1 and on the said basis, the name of Mohan Shetty ought to have been shown at SI. No.1 in the ballot paper. It is not true to suggest that the name of Dinakara Shetty was shown at Sl. No. 1 during 2004 election also. It is not true to suggest that there was no confusion among the voters regarding placing of name of Dinakara Shetty at Sl. No. 1 in the ballot paper. It is also elicited that while canvassing for voters, ballot papers were shown to the voters showing the name of the contesting parties and the Sl. No. She was not present in the Counting hall and she is deposing on the basis of the information received by her through others.

20. RW. 1 - Dinakar Keshav Shetty (respondent No. 1) has not spoken to about the allegation of illegality or violation of the Act and Rules by showing his name at SI. No. 1 in the ballot paper and he has stated that he was informed that counting has been done in accordance with law.

21. RW. 2 - Virupakshi Sadashiv Chougal, who was the Returning Officer in respect of Kumta constituency for the election, which is under challenge, has deposed in his examination-in-chief that he has published the list of contesting candidates in Form No. 7A. The said list was prepared on the basis of three categories. The first category is in respect of candidates contesting from registered recognized National political parties and State political parties in the State concerned. The secondary category comprised of candidates of registered unrecognized political parties and the third category comprised of independent candidates. In respect of each category, the list was prepared in alphabetical order vernacular language - Kannada as per Section 38 of the Act.The ballot paper was printed on the basis of serial number in the list of contesting candidates as prepared by him and he has followed the prescribed procedure while printing the ballot paper.

21.1 It is elicited in the cross-examination of RW.2 - Virupakshi Sadashiv Chougal that it is not true to suggest that he had not prepared the list of candidates in Form No. 7A in accordance with law. It is not true to suggest that he was required to show the names of persons sponsored by national policy at SI. No.1 as per Rule 38 of the Rules. There is no stage for filing objection regarding the mistake in mentioning the name of the candidates in the list of contesting candidates. It is false to suggest that he was required to show the name of Mohan Shetty at SI. No.1 and to favour Dinakar Shetty, he has shown his name at SI. No.1 in the ballot paper and in 2008, when elections were held, Janata Dal (S) was a recognized party. It is not true to suggest

that he had committed a mistake in preparing the list of valid nominations and that the same mistake had crept in, in the ballot paper. It is not true to suggest that he has not shown the list of candidates in Form No. 7A in the order of alphabets in vernacular language (Kannada). Dinakar Shetty's name was shown at SI. No. 1 in the list of candidates prepared in Form No.7A. The name of G. Nathkumar Gowda was shown at SI. No.2 in Form No.7A. The name of Mohan Krishna Shetty was shown at SI. No. 3 in the said list.

22. The above said evidence adduced by the parties has to be appreciated to find out as to whether the petitioner has proved that there is violation of Section 38 of the Act and Rule 10 of the Rules. Section 38 of the Representation of the People Act, 1950, reads as follows:-

> " **38. Publication of list of contesting candidates:-** (1) Immediately after the expiry of the period within which candidatures may be withdrawn under sub-section (1) of Section 37, the returning officer shall prepare and publish in such form and manner as may be prescribed a list of contesting candidates, that is to say, candidates who were included in the list of validly nominated candidates and who have not withdrawn their candidature within the said period.
>
> (2) For the purpose of listing the names under sub-section (1), the candidates shall be classified as follows, namely:
>
> (i) candidates of recognised political parties;
>
> (ii) candidates of registered political parties other than those mentioned in clause (i) ;
>
> (iii) other candidates.
>
> (3) The categories mentioned in sub-section (2) shall be arranged in the order specified therein and the names of candidates in each category shall be aranged in alphabetical order and the addresses of the contesting candidates as given in the nomination papers together with such other particulars as may be prescribed.

Rule 10 of the Conduct of Election Rules, 1961 reads as follows:

> " **10. Preparation of list of contesting candidates.-** (1) The list of contesting candidates referred to in sub- section (1) of Section 38 shall be in Form 7A or Form 7B as may be appropriate and shall contain the particulars set out therein and shall be prepared in such language or languages as the Election commission may direct.
>
> (2) [x x x x]
>
> (3) If the list is prepared in more languages than one, the names of candidates therein shall be arranged alphabetically according to the script of such one of those languages as the Election Commission may direct."

When the averments made in the petition and the deposition of PWs.1 to 4 is appreciated along with the averments made in the statement of objections and the evidence of the Returning Officer, who has prepared the list of candidates in Form No. 7A, it is clear that according to Section 38, three categories of persons, whose nomination had been validly accepted has to be prepared *i.e.,* (i) candidates belonging to recognized political parties; (ii) candidates of registered political parties other than those

mentioned in clause (i) and (iii) other candidates. Under Rule 10 of the Rules, the list of contesting candidates referred to in sub-section (1) of Section 38 of the Act shall be in Form 7A or Form 7B as may be appropriate and shall contain the particulars set out therein and shall be prepared in such language or languages as the Election Commission may direct. The provisions of Section 38 of the Act and Rule 10 of the Rules would also show that after preparing the categories of list of candidates, the same has to be arranged alphabetically in vernacular language i.e., Kannada. The evidence of the Returning Officer - RW.2 would clearly show that he has complied with all the requirements of Section 38 of the Act and Rule 10 of the Rules and has prepared the list of contesting candidates in accordance with Form No. 7A. Nothing has been elicited in the cross- examination of RW.2 to disbelieve his evidence. Further, it is clear from the evidence of PW.4 - Sharada Mohan Shetty that she has contended that her husband's name (Mohan Shetty) ought to have been shown at SI. No.1 in the ballot paper on the ground that her husband's name had been shown at SI. No.1 in the ballot paper during 2004 election. PWs.1 and 2, the election agent and the counting agent of the original election petitioner respectively, have not spoken as to how there is violation of the Rules or the Act. PWs.1 to 4. apart from stating that there was confusion among the voters and as a result, they have casted their votes in favour of respondent No.1 - Dinakar Shetty, whose name was shown at SI. No.1 in the ballot paper thinking that they were casting their vote in favour of the original petitioner (Mohan Shetty), have not proved the said confusion. Therefore, the petitioner has failed to prove that the list of validly nominated candidates was prepared in violation of Section 38 of the Act and Rule 10 of the Rules and that the same was not in the prescribed Form No.7A.

23. The other contention of the petitioner as argued by the learned senior counsel appearing for the petitioner is that there were 14 tendered votes and the same have not been counted on the date of counting i.e., 25.05.2008 and a large number of persons posed themselves as real voters and exercised the votes and thereby, prevented the real voters exercising their votes in the election. About 14 real voters came forward to apply for ballot papers, after other persons had already voted as such voters. After satisfying about the identity of each one of them, the Election Officer allowed them to mark the ballot paper (tendered ballot paper). The learned senior counsel further submitted that the Returning Officer did not take into account the tendered votes in the manner in which it ought to have been taken into account in view of the narrow margin of 20 votes between the original petitioner and respondent No.1 and non-counting of tendered votes has materially affected the result of the election.

24. On the other hand, the learned senior counsel appearing for respondent No.1 submitted that the tendered votes cannot be counted along with the other votes cast on EVMs., and the postal ballots and in view of the provisions of the Act and the Rules, it is not necessary to open the tendered votes. It is clear that Rule 56 (6) of the Rules provides that every ballot paper, which is not rejected under the said Rule shall be counted as one valid vote provided that no cover containing tendered ballot papers shall be opened and no such paper shall be counted. Therefore, the tendered votes cannot be counted and there is no breach of any provision of the Act or the Rules. In support of the said contention, the learned senior counsel has relied upon the decision of the Hon'ble Supreme Court in Dr. WILFRED D' SOUZA Vs. FRANCIS MENINO JESUS FERRAO (1977 (1) SCC 396).

25. The above said contentions of the learned counsel appearing for the parties has to be considered in the light of the evidence adduced by the parties by appreciating the same in the light of the relevant provisions of the Rules, which are alleged to have been breached. Rule 42 of the Conduct of Elections Rules, 1961, reads as follows:-

> **42. Tendered votes.-** (1) If a person representing himself to be a particular elector applies for a ballot paper after another person has already voted as such elector, he shall, on satisfactorily answering such questions relating to his identity as the presiding officer may ask, be entitled, subject to the following provisions of this rule, to mark a ballot paper (hereinafter in these rules referred to as a "tendered ballot paper") in the same manner as any other elector.
>
> (2) Every such person shall, before being supplied with a tendered ballot paper, sign his name against the entry relating to him in list in Form 15.

(3) A tendered ballot paper shall be the same as the other ballot papers used at the polling except that -

(a) such tendered ballot paper shall be serially the last in the bundle of ballot papers issued for use at the polling station; and

(b) such tendered ballot paper and its counterfoil shall be endorsed on the back with the words "tendered ballot paper" by the presiding officer in his own hand and signed by him.

(4) The elector, after marking a tendered ballot paper in the voting compartment and folding it, shall, instead of putting it into the ballot box, give it to the presiding officer, who shall place it in a cover specially kept for the purpose.

[Provided that where such elector is a member of a political party in an election to fill a seat or seats in the Council of States, the presiding officer shall, before placing the tendered ballot paper in the said cover, allow the authorised agent of that political party to verify as to which candidate the elector has cast his vote.

Explanation.- For the purposes of this rule, 'authorised agent', in respect of a political party, means an authorised agent appointed, under sub-rule (2) of Rule 39-AA as made applicable, by clause (ii) of Rule 70, to election, in a council constituency and, by assembly members other than by postal ballot under clause (a) of Rule 68, by the political party.]

Rule 56 (6) of the Conduct of Elections Rules, 1961, reads as follows:-

"56(6) Every ballot paper which is not rejected under this rule shall be counted as one valid vote:

provided that no cover containing tendered ballot papers shall be opened and no such paper shall be counted."

In Dr. Wilfred D' Souza's case ((1997) 1 SCC 396), the Hon'ble Supreme Court has considered the nature of tendered votes and the circumstances under which they can be considered and the nature and extent of proof necessary to prove the genuineness of the tendered votes under the provisions of Rules 42 and 56(6) of the Conduct of Elections Rules, 1961, and has held as follows:-

" Such tendered votes can be taken into account in proceedings to challenge the validity of the election of the returned candidate provided certain conditions are fulfilled. They are that evidence would have to be led on the following two points:

(1) The person who cast the initial vote as a voter on a particular serial number in the electoral roll was someone other than the genuine voter mentioned at that number.

(2) It was such genuine voter who marked the tendered ballot paper.

So far as the first point is concerned, the evidence of the genuine voter that he had not cast such initial vote would, normally and in the absence of any circumstance casting doubt regarding its veracity, be sufficient. Once the above two points are proved, the following consequences would follow:

(a) the court would exclude the vote initially cast by the person other than the genuine voter from the number of votes of the candidate in whose favour it was cast; and

(b) the court would further take into account the tendered ballot paper in favour of the candidate in whose favour it is duly marked."

26. PW. 1- Monte Louis Fernandes, who was the election agent of the original election petitioner has deposed in his evidence that in EX.P6 at Sl. No.67, the number of tendered votes is shown as 2 and the Returning Officer has not followed the proper procedure in counting the votes.

26.1 It is elicited in the cross-examination of PW. 1 - Monte Louis Fernandes that it is not true to suggest that the tendered votes should not be counted at the time of counting other votes and that the tendered votes can be opened before the Election Tribunal only under the orders of the Court and it is not true to suggest that the seal put to EVMs., were shown to all the counting agents present on all the tables before opening the same.

27. PW.2 - Vasanth L. Naik has deposed in his examination-in-chief that there were 14 tendered votes and the said votes were not counted and the said tendered votes had been cast in favour of the original petitioner - Mohan Shetty and due to non-following of the procedure for counting votes, the original petitioner - Mohan Shetty was defeated in the election.

28. PW. 3 -Chandrahasa Hosabu Nayak has deposed in his examination-in-chief that there were 14 tendered votes and the said votes had been cast in favour of the original petitioner - Mohan Shetty and due to improper counting of the said votes, Mohan Shetty lost the election.

29. PW. 4 - Smt. Sharada Mohan Shetty, the wife of the original petitioner has deposed in her examination- in-chief that there were 14 tendered votes and the said tendered votes had been cast in favour of Mohan Shetty and the said votes ought to have been taken into account.

29.1 PW. 4 - Smt. Sharada Mohan Shetty has denied the suggestion that counting of votes had been done properly. She does not know the name of the voters, who had submitted the tendered votes.

30. It is clear from the above said evidence on record that PWs.1 to 4, apart from saying that there were 14 tendered votes and that the said votes ought to have been counted and the said votes had been cast in favour of the original petitioner - Mohan Shetty, no material is produced in support of the said self-serving statements. Further, in view of the provisions of the Act and the Rules and the decision of the Hon'ble Supreme Court in Dr. Wilfred D' souza referred to above, it is clear that tendered votes need not be taken into account by the Returning Officer. In the present case, the margin of votes with which respondent No.1 is declared elected is 20 and even according to the petitioner, the number of tendered votes was 14 and the names of the persons, who had cast tendered votes have not been placed on record and no person, who had cast the tendered vote has been examined and even otherwise, the question of counting the said votes by the Returning officer did not arise and in this petition also, no ground whatever is made out to show that the tendered votes have to be counted. Therefore, the contention of the petitioners that tendered votes have to be taken into account and counted, cannot be accepted. Apart from making the above said averments regarding the violation of the Act and the Rules in preparing the list of candidates and non-counting of tendered votes, the only other violation of the provisions of the Act and the Rules referred to in the petition is regarding the counting of postal ballot papers, which is the subject matter of a separate issue. Accordingly, **I answer issue No.2 in the negative.**

31. **Issue No. 1 :** This issue pertains to violation of Rule 54-A of the Rules regarding counting of postal ballot papers and also the wrongful rejection of the application filed by the counting agent of the original petitioner seeking for recounting of votes on the ground that the counting of postal ballot papers had not been done in accordance with law and wherefore, requires recounting.

32. The learned senior counsel appearing for the petitioner submitted that it is averred in the petition that the postal ballot papers were not properly counted by the Returning Officer and according to the petitioner, the key of the lock put to the box

containing postal ballots was lost and wherefore, counting of votes cast through postal ballot papers could not be started in the first instance before commencement of counting of votes cast on EVMs. He submitted that under Rule 54-A of the Rules, counting of the postal ballots has to be taken up first and the material on record would clearly show that the counting of postal ballots was not commenced first and counting of votes cast on EVMs., had already started before the commencement of counting of postal ballots and wherefore, there is violation of Rule 54-A of the Rules. He further submitted that the counting of postal ballots was not properly done by the Returning officer as the counting of votes cast through postal ballot papers is to be done by the Returning Officer himself and while counting of postal ballots, agents of the original petitioner were not shown the postal ballot papers, which were being rejected and the counting was not done in accordance with law. The Returning Officer was abruptly stopping the counting of postal ballots to announce the result of each round of counting of votes cast on EVMs., at various tables and was attending to supervision work of counting of votes cast on EVMs., and wherefore, counting of postal ballots has not been done in accordance with law. He further submitted that as per the averments made in the petition, at least 50% postal ballot papers, wherein vote had been cast in favour of the original petitioner, have been wrongfully rejected and if the said postal ballots had been counted in accordance with law, the original petitioner would have been declared elected as the first respondent was declared elected only with the margin 20 votes. He further submitted that though an application was given for recounting by the counting agent of the original petitioner, the same was rejected by the Returning Officer illegally and wherefore, the counting of postal ballots is necessary as the petitioner has made out the case that the result of the election is prejudicially affected in view of the fact that the postal ballots had not been counted in accordance with law. The learned senior counsel has taken us through the oral and documentary evidence adduced by the parties in this behalf and submitted that issue No.1 should be answered in favour of the election petitioner.

33. The learned senior counsel appearing for respondent No.1 submitted that though Rule 54A of the Rules prescribes that the counting of votes cast through postal ballot papers should start in the first instance before the commencement of counting of votes cast on EVMs., the said sub-rule (1) of Rule 54A of the Rules has to be read along with Rule 54A(2), wherein it is stated that no cover in Form 13C received by the Returning Officer after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted and wherefore, the intention of enacting sub-rule (1) of Rule 54A of the Rules is to see that the Returning Officer shall first deal with the postal ballot papers so that once the counting commenced, no cover in Form 13C received after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted as stipulated under sub-rule (2) of Rule 54A of the Rules. Both the sub-rules (1) and (2) of Rule 54A of the Rules are harmoniously constructed and the Rules do not prescribe that the counting of postal ballot papers should be taken up first and only after the counting of postal ballot papers is over, the votes cast on EVMs. should be counted as the said interpretation would lead to animus results and is not the intention of the Legislature in enacting sub-rules (1) and (2) of Rule 54A of the Rules and wherefore, there is no violation of Rule 54A of the Rules as alleged by the petitioner. He further submitted that the postal ballot papers have been counted in accordance with law in the presence of the counting agents and election agents of the contesting candidates and they were all shown the rejected postal ballot papers. The evidence of RW.2 - Returning Officer would clearly show that the counting of postal ballot papers has been done in accordance with Rule 54A of the Rules and the petitioner has not produced any specific material to show as to how the Returning Officer has violated the provisions of Rule 54A of the Rules and the averments made in the petition are vague and do not make out any specific ground of violation. It is well settled that any violation of Rules should be specifically averred and the petitioner should further show that the said violation has materially affected the result of the election and wherefore, the petitioner has failed to prove that the postal ballot papers have not been counted in accordance with law or is in non-compliance with the provisions of Rule 54-A of the Rules. The learned senior counsel further submitted that no objection was filed either by the original petitioner, who had contested the election or by his election agents or counting agents objecting wrong counting of the postal ballot papers at the time of counting of the same and applications were filed for recounting of the postal ballots as well as the votes cast on EVMs., on the ground that the margin of votes with which the first respondent is declared elected is only 20 votes and the said application for recounting has been rejected by the Returning Officer. The learned senior counsel further submitted that the petitioner has failed to prove the specific instance of illegal counting of postal ballot papers by the Returning Officer and in the absence if any such proof, the question of recounting

the votes would not arise and no material is produced by the petitioner to show that the result of the election has prejudicially affected the petitioner and wherefore, issue No.1 may be answered in favour of respondent No.1 and the petition may be dismissed. The learned senior counsel, in support of his contention, has relied upon a number of decisions, which would be referred to while considering the contentions of the learned counsel appearing for the parties.

34. The aforesaid contentions of the learned counsel appearing for the parties have to be considered in the light of the oral and documentary evidence adduced by the parties in this petition.

35. PW.1 - Monte Louis Fernandes, the election agent of the original election petitioner has deposed in his examination-in-chief that EVMs., were used for casting votes. Ballot papers were also received by posts. Counting of votes commenced at 8 a.m. on 25.05.2008. The box containing the postal ballot papers was brought to the table of the Returning Officer. The key of the lock put to the box, which contained ballot papers was lost and they searched for the key, but, the same could not be traced. The Returning Officer started counting of votes cast on EVMs. Fourteen tables had been arranged for counting of votes cast on EVMs. The counting was arranged in a class room in Dr. A.V. Baliga College, Kumta. The said room was congested for placing 14 tables for counting. He has further deposed that when counting of votes cast on EVMs. had started and was in progress, the Returning Officer secured his staff and broke open the lock, which had been put to the box containing postal ballot papers and all the postal ballot papers were poured on the small table of the Returning Officer. The Returning Officer was looking into the progress made at the counting tables and also counting the postal ballot papers and there was mess and they were informed that there were 815 postal ballot papers in the box. However, when the box was opened, there were 813 postal ballot papers. The Returning officer and his assistants were counting the postal ballot papers and they were not shown the said postal ballot papers. They were informed that 39 postal ballot papers had been rejected as invalid and in the declaration given by the Returning Officer, 227 postal ballot papers were shown as rejected as invalid. Immediately, he submitted an application for recounting of the postal ballot papers. The said particulars are mentioned in Ex.P2. He has produced copy of the application for recounting of postal ballot papers as per Ex.P3. The said application given by him for recounting was rejected as per the endorsement - Ex.P4 signed by the Returning Officer as per Ex.P4(a). He was not given any opportunity before rejecting the application or recounting. He has further deposed that the application given by the counting agent for recounting was also rejected as per order - Ex.P5. The Returning Officer has furnished general statistics as per Ex. P6. The application given for recounting submitted on 29.05.2008 was also rejected.

35.1 It is elicited in the cross-examination of PW.1 - Monte Louis Fernandes that he had appointed 15 counting agents on behalf of Mohan Shetty, the original election petitioner. Whenever election is held to the Legislative Assembly, counting of votes would be arranged in A.V. Baliga' s College, Kumta. The counting of votes commenced from 8 a.m. on 25.05.2008. It is not true to suggest that the Returning Officer tried to open the lock put to the box containing ballot papers, but, could not open the lock as the lock had rusted. The witness has volunteered that the key to the lock had been lost. It is not true to suggest that the lock put to the box containing the postal ballot papers was broken open at 8:15 a.m. The witness has volunteered that the lock was broken open after one hour after the commencement of the counting. He does not know as to whether permission of the observer was obtained by the Election Commissioner and that observer was present when the lock was broken open. It is true that when the lock was broken open, the candidates and election agents including him were present. The said incident of breaking open the lock might have been videographed. It is not true to suggest that there was no congestion in the counting hall and the counting was visible to all the election agents, counting agents and also the candidates. He did not know on the date of counting that 609 postal ballot papers had been issued by the Returning Officer and he came to know of the same only on 29.05.2008 after endorsement - Ex.P7 was issued. He also came to know after Ex.P7 was issued that only 387 votes had been cast through postal ballot papers out of 609 ballot papers issued by the Returning Officer. It is not true to suggest that he was deposing falsely that there were 813 postal ballot papers in the box. It is not true to suggest that each of the postal ballot papers was shown to election agents and counting agents before accepting or rejecting it. It is not true to suggest that he did not object to the procedure adopted in counting postal ballot papers.

36. PW.2 - Vasanth L Naik, who was the counting agent of the original election petitioner, has deposed in his examination-in-chief that the counting of votes had been arranged in a hall in A. V. Baliga College, Kumta. Fourteen counting tables had been arranged and around each table, there were eight counting agents. The box containing postal ballot papers was brought to the table of the Returning Officer and the same had been locked and sealed. The key to open the lock put to the said box could not be traced and they started searching for the same. They could not trace the key. Thereafter EVMs., were brought and distributed to the counting tables. They could not properly see the seal put on EVM. Thereafter, they started counting the votes cast on EVM. Progress of counting from each table was being reported to Returning Officer on completion of each round of counting. Staff of the Returning Officer broke open the lock put to the box containing ballot papers. They were not informed about breaking open of the lock put to the box containing ballot papers. The postal ballot papers contained in the box were poured on a small table of the Returning Officer and 7 to 8 persons around the table started counting the postal ballot papers. They were told that there were 815 postal ballot papers in the box and after opening the box, 813 postal ballot papers were found. The counting of votes cast on EVMs., and the counting of postal ballot papers was going on simultaneously. The Returning Officer was viewing the counting tables by sitting in his chair. He had raised objection for manner of counting postal ballot papers. The election agent -Monte Fernandes gave an application for recounting of postal ballot papers. That application was rejected by the Returning Officer. Another application was filed for recounting by Smt. Sudha Gowda, counting agent and that application was also rejected. He has further deposed that Mohan Shetty was defeated in the election as postal ballot papers were not counted properly. 38 votes cast by way of postal ballot papers for Mohan Shetty were improperly rejected. They were informed that 39 postal ballot papers had been rejected as invalid and in the declaration, the said number was shown as 227. If 227 postal ballot papers which had been wrongly rejected were counted, Mohan Shetty would have got more than 150 votes among them.

36.1 It is elicited in the cross-examination of PW.2 - Vasanth L Naik that he was appointed as counting agent in respect of 12th or 13th table. He was counting agent for Sri Mohan Shetty even during 2004 elections. It is not true to suggest that the box containing postal ballot papers was brought to the table of the Returning Officer about 8:15 a.m. on 25.05.2008 and since the lock could not be opened with the key available with the Returning Officer, the lock was broken open. He was present when the lock was broken open. It is true that the observer nominated to the voting center had given permission to break open the lock put to the box containing postal ballot papers and only thereafter, the lock was broken open and observer was present at that time. He did not observe as to whether the said incident of breaking open the lock was videographed. It is further elicited that counting had already started at the table for which he was appointed when the lock was broken open. The lock was broken open in the same hall, wherein tables for counting votes had been arranged. All the candidates and agents were present, but, they could not observe as counting in EVMs., had already started. He had not filed any complaint in writing for recounting of postal ballot papers. He has denied the suggestion that all the postal ballot papers had been properly counted and that he had deposed falsely that 38 votes cast through postal ballot papers in favour of Mohan Shetty had been wrongfully rejected. It is not true to suggest that he had deposed falsely that if 227 rejected postal ballot papers had been counted properly, Mohan Shetty would have got 150 votes more. It is elicited that there might be only 609 postal ballot papers had been issued and among them, 387 were received and that he has deposed falsely that 813 ballot papers were there in the box.

37. PW.3 - Chandrahasa Hosabu Nayak, who was the counting agent of the original election petitioner has deposed in his examination-in-chief that the box containing postal ballot papers was brought to the table of the Returning Officer after counting of votes cast on EVMs., had started. The said box had been locked and sealed. The Returning Officer was not having the key to open the said lock. The Returning Officer ordered for commencement of counting of votes cast on EVMs. There were 14 tables for counting votes and around each table, there were 8 counting agents. Counting Hall was small. The Returning Officer was supervising counting at the said tables. The progress of counting at the end of each round was being reported to the Returning Officer. Since the key to open the lock with the box containing postal ballot papers could not be traced, the Returning Officer told the staff to break open the lock and postal ballot papers were poured on the table of the Returning Officer. They were informed that 815 postal ballot papers had been received and out of the same, 39 postal ballot papers were rejected as invalid. In the statement, it was shown that 227 postal ballot papers were rejected. If 227 postal ballot papers, which were improperly rejected

had been counted, Mohan Shetty would have got more than 150 votes among 227 ballot papers. Counting of postal ballot papers and votes cast on EVMs., had been done simultaneously and due to improper counting of votes, Mohan Shetty lost the election.

37.1 It is elicited in the cross-examination of PW.3 - Chandrahasa Hosabu Nayak that it is not true to suggest that the postal box containing postal ballot papers was brought to the Returning Officer and the lock put to the said box could not be opened with the key and thereafter, the lock was broken open. The witness has volunteered that the key to the lock was not available. It is not true to suggest that the lock was broken open at 8:15 a.m. The witness has volunteered that the lock was broken open between 9:30 a.m. to 10:00 a.m. on 25.05.2008. It is further elicited that counting of votes cast on EVMs., had already commenced and the lock put to the box containing postal ballot papers was broken open by the staff of the Returning Officer. The lock was broken open in the same hall where counting was being done. It is not true to suggest that permission of the observer was taken and that observer was also present at the time of breaking open of the lock. Candidates were not present and election agents were present when the lock was opened. He does not know as to whether the proceedings leading to breaking open of the lock had been videographed. It is not true to suggest that there was no congestion in the counting hall and the counting was done properly. It is not true to suggest that there were only 387 postal ballot papers and not 815 as deposed by him. He has not complained orally or in writing regarding counting of postal ballot papers or votes recorded in EVMs. It is not true to suggest that postal ballot papers had been counted correctly and that he has deposed falsely that 39 postal ballot papers cast in favour of Mohan Shetty had been wrongfully rejected. It is not true to suggest that he had deposed falsely that if 227 postal ballot papers had been wrongfully rejected and if the said ballot papers had been counted, Mohan Shetty would have got more than 150 votes. It is not true to suggest that they were not at all present near the table, wherein postal ballot papers were counted and at the counting table at which, he was appointed and that he was deposing falsely to help the election petitioner.

38. PW 4 - Smt. Sharada Mohan Shetty is the wife of the original petitioner and her evidence is not helpful to the petitioner as she was not present at the time of counting of votes and her evidence is based upon the information given to her by PWs.1 and 3, the election agent and counting agent of the original petitioner respectively and others.

39. The evidence of RW 1 - Dinakar Keshav Shetty is not of much help to the respondents as he was not present at the time of counting.

40. RW.2 - Virupakshi Sadashiv Chougala, the Returning Officer has deposed in his evidence that counting of votes commenced on 25.05.2008 at 8 a.m. The lock put to the trunk containing postal ballot papers could not be opened with the key as the lock had rusted and wherefore, in the presence of the observer appointed by the Election commission, the said lock was broken open. Tahsildar, the observer appointed by the Election Commission and the election agents of the contesting candidates were present when the lock was broken open. Counting agents were also present at that time. All the ballot papers contained in the trunk were removed and placed on the table in the presence of counting agents, observer and Tahsildar and thereafter, the said postal ballot papers were counted. The process of separating valid and invalid postal ballot papers commenced. Cover B which contain Form No.13C was opened and was verified, the declaration in Form No.13B was verified. On verification of Form No.13A, invalid postal ballot papers were rejected and valid postal ballot papers were kept in a separate cover. Thereafter, Form No.13A cover containing valid postal ballot papers was opened and thereafter, the said ballot papers were classified as valid and invalid ballot papers and invalid ballot papers were separated. Valid postal ballot papers were bundled in respect of each candidate and invalid votes were rejected. No contesting candidate or his counting agents objected to counting of postal ballot papers. He has deposed that Ex.P7 is the endorsement issued by him as Returning Officer to the counting agent of Sri Mohan Shetty, the original petitioner. The details contained in the said Ex. P7 are true and correct.

40.1 It is elicited in the cross-examination of the Returning Officer - RW.2 that the counting of votes commenced at 8:05 a.m. on 25.05.2008. Stationery forms, covers and EVMs., were received by them about one week or 15 days before the date of election. Trunk in the office of the Tahsildar was being used to keep postal ballot papers. There was direction to the effect to use the said Trunk from the District Election Officer. He cannot tell definitely as to how many days prior to the date of election that he had secured the Trunk from the Tahsildar ' s office. However, it was prior to the date of election. I had inspected the Trunk before taking possession of the same. The lock and key of the said Trunk were also given along with the Trunk. The lock and key were

operative when the possession of the Trunk was taken and it was sealed after taking possession. He had put the seal on the said Trunk. The key and the lock put to the Trunk were in his custody. He had closed the lock put to the Trunk by using the key before sealing. There would be a space on the top of the Trunk for inserting postal ballot papers. The key was of steel colour. He cannot tell the exact number of days from which the seal was put if counted from the date of counting. No separate proceeding was drawn regarding sealing of the said Trunk. He cannot give the measurement of the hall in which counting of votes had been arranged. It is not true to suggest that the said hall was small and overcrowded. There were 14 tables for counting votes cast on EVMs., and one table for counting postal ballot papers. He was sitting at the table meant for counting votes cast through postal ballot papers. Before he occupied the chair near counting table for counting postal ballot papers, he had delivered EVMS., to the respective tables meant for counting the votes cast on EVMs. The Trunk containing postal ballot papers was brought and placed on the table of which he was in- charge. Supervisory staff brought the said Trunk to his table. The key of the lock put to the said Trunk was in his custody. He removed the seal put to the Trunk. Observer and Tahsildar were present at that time. The lock put to the Trunk could not be opened. It is not true to suggest that he had lost the key and therefore, the lock could not be opened. Since the lock could not be opened with the key, he thought that due to rusting of the key, it might not had been possible to open the lock. He broke open the lock by hitting with a hammer. Hammer was available with him as tools were kept at the time of counting. He broke open the lock with the help of his staff. His staff hammered the lock and broke it open in his presence. He cannot tell the description of the lock which was put to the trunk. He cannot tell as to whether the said lock was of local type (mavinakuruve). The lock put to the trunk was strong and sturdy. It is not true to suggest that one hour was taken to break open the said lock. No proceedings have been prepared evidencing that the lock was broken open as it could not be opened with the key. Counting of votes cast on EVMs., started at 8:15 a.m. It is not true to suggest that before the lock could be broke open, counting of votes cast on EVMs., had already started. When the lock was broken open and postal ballot papers were poured on the table, counting of votes cast on EVMs., had already commenced. He was being informed at the end of each round of counting at each of the table meant for counting of votes cast on EVMs. The requisite information was being collected by his staff from the counting table in the prescribed form. He cannot tell the number of staff deployed for that purpose at that point of time. He was receiving information from his staff while he was counting the postal ballot papers. It is further elicited that 387 votes had been cast in postal ballot papers. In Ex.P7, the particulars at SI. No.2 regarding the Government servants, who had cast their votes is left blank since the votes cast by Government servants and defence personnel could not be bifurcated. 160 validly cast postal ballot papers were in cover 13A. After ascertaining that the particulars contained in 13A cover was valid, cover 13B was opened. 227 votes cast through postal ballot papers were rejected. Before rejecting the ballot papers as not validly cast, the same was looked into and ballot papers were verified for that purpose. It is not true to suggest that without verifying the ballot papers, he has wrongfully rejected the votes cast in the ballot papers though they were valid. It is not true to suggest that the votes, which had been validly cast had been rejected without verification of the declaration. It is not true to suggest that he has not properly verified the votes cast through postal ballot papers in 13B cover. He cannot give the exact number of votes that were rejected after classifying the validly cast votes. He has denied the suggestion that he had orally informed the election agents that 39 votes cast through postal ballot papers had been rejected. The request made by the counting agents for recounting had been rejected as no valid reason had been assigned. It is not true to suggest that he had rejected the application for recounting in a haste and declared the result of the election by rejecting the request for recounting without affording opportunity to the applicants.

41. The documentary evidence produced on behalf of the election petitioner to prove the allegation of improper counting of votes cast through postal ballot papers in violation of Rule 54A of the Rules comprise of Exs.P3 to P7. Ex.P3 is the application dated 25.05.2008 given by PW. 1 - Monte Louis Fernandes to the Returning Officer (RW.2) stating that as the margin of votes with which the first respondent is declared elected in the election is very low and requesting the Returning Officer to make arrangement for recounting of votes cast on EVMs., as well as through postal ballot papers in respect of Kumta Constituency, according to Rule 65 of the Rules. Ex.P4 is the endorsement dated 25.05.2008 issued by the Returning Officer - RW.2 rejecting the application given by PW.1 for recounting as per Ex.P3 stating that the application for recounting has been made after completion of counting of votes and after declaration of the result of the election and that the votes were counted in the presence of the election agents and counting agents of the contesting candidates. Ex.P5 is the endorsement issued by the Returning

Officer dated 25.05.2008 rejecting the application for recounting filed by one Smt. Sudha Gowda, who has not been examined before the Court on the ground that no objection was raised at the time of counting of votes and no particulars were furnished by the applicant. Ex. P6 is the final result sheet in respect of election to the Kumta constituency. Ex.P7 is the endorsement dated 29.05.2008 issued by the Returning Officer to Smt. Sudha B. Gowda, wherein it is stated that in all 609 postal ballot papers had been issued and out of the same, 227 postal ballot papers were rejected as invalid and 160 ballot papers were valid and the particulars of the votes cast through postal ballot papers in respect of each of the candidates, who had contested the election, has been furnished.

42. The above said oral and documentary evidence has to be considered and appreciated in the light of the contentions of the original petitioner that the impugned election is vitiated for violation of Rule 54A of the Rules. Rule 54A of the Conduct of Elections Rules, 1961 reads as follows: -

> **"54A. Counting of votes received by post.-** (1) The returning officer shall first deal with the postal ballot papers in the manner hereinafter provided.
>
> (2) No cover in Form 13C received by the returning officer after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted.
>
> (3) The other covers shall be opened one after another and as each cover is opened, the returning officer shall first scrutinise the declaration in Form 13A contained therein.
>
> (4) If the said declaration is not found, or has not been duly signed and attested, or is otherwise substantially defective, or if the serial number of the ballot paper as entered in it differs from the serial number endorsed on the cover in Form 13B, that cover shall not be opened, and after making an appropriate endorsement thereon, the returning officer shall reject the ballot paper therein contained.
>
> (5) Each cover so endorsed and the declaration received with it shall be replaced in the cover in Form 13C and all such covers in Form 13C shall be kept in a separate packet which shall be sealed and on which shall be recorded the name of the constituency, the date of counting and a brief description of its content.
>
> (6) The returning officer shall then place all the declarations in form 13A which he has found to be in order in a separate packet which shall be sealed before any cover in Form 13B is opened and on which shall be recorded the particulars referred to in sub-rule (5).
>
> (7) The covers in Form 13B not already dealt with under the foregoing provisions of this rule shall then be opened one after another and the returning officer shall scrutinise each ballot paper and decide the validity of the vote recorded thereon.
>
> (8) A postal ballot paper shall be rejected-
>
> (a) if it bears any mark (other than the mark to record the vote) or writing by which the elector can be identified; or
>
> (aa) if no vote is recorded thereon; or

(b) if votes are given on it in favour of more candidates than one; or

(c) if it is a spurious ballot paper; or

(d) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established; or

(e) if it is not returned in the cover sent along with it to the elector by the returning officer.

(9) A vote recorded on a postal ballot paper shall be rejected if the mark indicating the vote is placed on the ballot paper in such manner as to make it doubtful to which candidate the vote has been given.

(10) A vote recorded on a postal ballot paper shall not be rejected merely on the ground that the mark indicating the vote is indistinct or made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked.

(11) The returning officer shall count all the valid votes given by postal ballot in favour of each candidates, record the total thereof in the result sheet in Form 20 and announce the same.

(12) Thereafter, all the valid ballot papers and all the rejected ballot papers shall be separately bundled and kept together in a packet which shall be sealed with the seals of the returning officer and of such of the candidates, their election agent or counting agents as may desire to affix their seals thereon and on the packet so sealed shall be recorded the name of the constituency, the date of counting and a brief description of its contents."

43. It is the contention of the original election petitioner as argued by the learned senior counsel appearing for the petitioner that the oral and documentary evidence on record shows that the counting of votes cast through postal ballot papers was not taken up first and before commencement of counting of the said votes cast through postal ballot papers, the counting of votes cast on EVMs., was started and the counting of postal ballots and the votes cast on EVMs., proceeded simultaneously and the same is opposed to the provisions of Rule 54-A of the Rules and wherefore, the election is vitiated. It is clear from the provisions of Rule 54A(1) of the Rules that the Returning Officer should first deal with the postal ballot papers in the manner prescribed in the said Rule. The contents of sub-rule (2) of Rule 54A would make it clear as to why the Returning Officer should first deal with the postal ballot papers in the manner prescribed under the said Rule as according to the said sub-rule(2), no cover in Form 13C received by the Returning Officer after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted. Therefore, on commencement of counting of postal ballot papers, no cover in Form 13C received by the Returning Officer can be opened and no vote contained in such cover can be counted. Therefore, the provisions of sub-rules (1) and (2) of Rule 54A of the Rules has to be construed harmoniously. It is not the contention of the original election petitioner that the postal ballot papers were received after the commencement of counting of postal ballot papers and the same were accepted or rejected. However, what is contended by the original petitioner is that since the counting of postal ballot papers did not commence first and counting of votes cast on EVMs., had already been started by the Returning Officer before commencement of counting of postal ballot papers, there is violation of Rule 54A(1) of the Rules. It is clear from the above said evidence of the witnesses – PWs. 1 to 3 and RW.2 that the fact that the counting of votes cast through postal ballot papers was taken up after commencement of counting of votes cast on EVMs., is indisputable as it is admitted by RW.2 and it is also clear from the evidence of PWs.1 to 3 and RW. 2 that the box containing postal ballot papers was locked and according to the Returning Officer, the said lock could not be opened with the key which was available with him. However, he distributed EVMs., on other tables and the lock put to the box containing postal ballot papers was broken open with the permission of the observer

appointed by the Election Commission in the presence of the counting agents and the candidates. However, according to the election petitioner, the key of the said lock put to the box containing postal ballot papers had been lost and the said lock had to be broken open, which took more than one hour and wherefore, the counting of votes cast on EVMs., started earlier than the counting of votes of postal ballot papers contained in the said box. It is the contention of the petitioner that counting of votes cast on EVMs., could not have commenced prior to commencement of counting of postal ballot papers contained in the said box.

44. I have already held that the provisions of sub-rules (1) and (2) of Rule 54A of the Rules have to be read together and what is required under sub-rule (1) is that the Returning Officer shall first deal with the postal ballot papers and the same has to be read along with the contents of sub-rule (2), which stipulates that no cover in Form 13C received by the Returning Officer after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted and wherefore, the provisions of Rule 54A does not prescribe that the counting of votes cast on EVMs., should be started only after the votes cast through postal ballot papers are counted in its entirety. In E.P. No.14/2004 decided on 03.03.2005, wherein also, the question as to whether the counting of postal ballots should be completed before the commencement of counting of votes cast on EVMs., has been negatived by the learned single Judge and has observed as follows:-

> "60. The said argument proceeds on the assumption that in law there is a prohibition for counting of other votes simultaneously with that of the postal ballots. The question is, is there any such prohibition. All that Rule 54A states is R.O shall first deal with the postal ballot papers in the manner hereinafter provided. All that the Rule mandates is the postal ballots shall be counted first. The reason is not far to seek. It is contained in sub-rule (2) of Rule 54A. Sub-rule (2) provides that, no cover in Form 13-C received by the R.O after the expiry of the time fixed in that behalf shall be opened and no vote contained in any such cover shall be counted. In other words, postal ballot papers continue to come even after the polling date. It is possible that postal ballots may reach the R.O on the counting day after the commencement of the counting. Whereas other votes are concerned after the polling is over there is no question of addition of any votes. It is in that context, the Parliament wanted to make its intention clear by saying, after the counting is commenced if any ballot papers are to be received that shall not be taken into consideration. They shall be kept separately and they shall even not be opened and they shall be treated as rejected votes. It is in that context a dead line has to be fixed so far as postal ballot papers are concerned. Therefore the Rule says postal ballots shall be counted first, thereby meaning that postal ballots received after the counting shall be rejected. It can be further stated that other votes shall not be counted before the commencement of counting of postal ballots but it does not follow that other votes are to be counted only after the counting of postal ballot papers. In fact relying on sub-rule 11 of Rule 54A it was contended the R.O after counting of all valid votes given by the postal ballot in favour of each candidate has to record the total thereof in the result sheet in Form 20 and announce the same and only thereafter the other votes could be taken for consideration. The process of counting clearly set down in the rules do not indicate any such intention on the part of the Parliament. On the contrary, Rule 55 clearly says that the R.O may have the ballot box or boxes used at more than one polling station opened and the ballot papers found in such box or boxes counted simultaneously. If the counting is being conducted in more than one place, the place where the R.O is placed is

> treated as the last place where the ballot papers are counted. Therefore, a reading of these provisions in the context in which it is used, keeping in mind the object with which these Rules are framed, makes it abundantly clear in law there is no prohibition for counting of postal ballots and other votes simultaneously. The requirement of law is postal ballots counting shall be taken first, i.e., at the commencement of counting, so that postal ballots received after counting is not taken into consideration."

45. It is also clear from the evidence adduced by the petitioner and the respondents in the present case that the fact that counting of votes cast through postal ballot papers could not be commenced at 8 a.m. on 25.05.2008 is indisputable as the lock could not be opened and according to the petitioner, the Returning Officer had lost the key and according to the Returning Officer, the lock could not be opened as the key had rusted. However, the fact remains that the lock put to the box containing the postal ballot papers was broken open and thereafter, the counting was done on the table of the Returning Officer and wherefore, the contention of the petitioner as argued by the learned senior counsel appearing for the petitioner that only after completion of counting of votes through the postal ballot papers, votes cast on EVMs. had to be counted, cannot be accepted.

46. Further, the contention of the petitioner in this case is that the postal ballot papers had not been properly counted. It is stated by PWs.1,2 and 3 as referred to above that according to them, the box contained 815 postal ballot papers. However, when the contents of the box was poured on the table of the Returning Officer, there were only 813 postal ballot papers and they were informed orally that 39 postal ballot papers had been rejected as invalid and only 160 postal ballot papers were found to be valid. The contents of Ex.P7 would clearly show the particulars of the postal ballot papers furnished by the Returning Officer and the same has been produced by the petitioner. The same would show that 609 postal ballot papers had been issued and out of the same, votes cast through 227 postal ballot papers were rejected as invalid and 160 postal ballot papers were found to be correct and the said statement - Ex.P7 also contains the data with regard to votes cast in favour of each of the contesting candidates at SI. No.5 The evidence of PWs.1 to 3 that there were 813 postal ballot papers and that they were orally informed that 39 postal ballot papers had been rejected, is without any basis and has not been substantiated. Further, it should also be noted at this stage itself that during counting of postal ballot papers, no objection whatever was raised regarding the counting of postal ballot papers and the application for recounting as per Ex.P3 was filed by PW. 1, the election agent of the original petitioner not on the allegation of any violation of Rules in counting of postal ballot papers, but, re-counting was sought only on the ground that having regard to the low margin of votes with which the first respondent is declared elected, there should be re-counting of votes cast on EVMs., and postal ballots. The application for recounting given by Smt. Sudha Gowda has not been produced nor has she been examined. However, the Returning Officer has issued endorsement - Ex. P5, which shows that the said application of Smt. Sudha Gowda for recounting has been rejected since no objection was raised during counting of votes cast through postal ballot papers and the same have been counted in accordance with law and have been accepted during every round. Therefore, it is clear that there is no merit in the contention of the petitioner that there is violation of sub-rules (1) and (2) of Rule 54A of the Rules as referred to above.

47. The next contention of the election petitioner as argued by the learned senior counsel appearing for the petitioner is that there was wrongful counting of postal ballot papers, which has resulted in rejection of postal ballot papers, in which votes had been cast in favour of the original petitioner and the same has materially affected the result of the election petition and the application for re- counting has been wrongly rejected and wherefore, the petitioner is entitled to recounting of postal ballots.

48. I have already held above that the self- serving statements of PWs.1, 2 and 3 that there were 815 postal ballot papers contained in a box and when the contents were poured on the table of the Returning Officer, there were 813 postal ballot papers and that they were informed orally that 39 postal ballot papers had been rejected, have not at all been substantiated. On the other hand, Ex.P7, which is produced by the petitioner himself and spoken to by the Returning Officer - RW.2, who has issued it, would clearly show that in all, 609 postal ballot papers were issued from the constituency and only 160 votes cast through ballot papers were found to be valid and 227 postal ballot papers were rejected as invalid. When the said fact was confronted with PWs.1 to 3, they have admitted the contents of Ex.P7 and wherefore, the contention of the petitioner that there were 813 postal ballot papers

in the box and only 39 postal ballot papers were rejected has not been substantiated. Further, it is also clear from a perusal of the evidence of PWs.1 to 3 that the statement of PWs.1 to 3 that if 227 rejected postal ballot papers had been counted properly, about 150 votes would have been in favour of the original election petitioner is not substantiated. The contention of the petitioner that since the first respondent has been declared elected with the margin of 20 votes, improper counting of postal ballot papers has materially affected the election and wherefore, the petitioner is entitled to recounting of postal ballot papers, cannot be accepted as it is well settled that mere fact that the first respondent is declared elected with small margin of 20 votes in the present case by itself, would not be a ground to order recounting of votes and in order to claim recounting, the burden is upon the petitioner to prove that the counting of postal ballot papers has not been done in accordance with law and they must produce material notes which they had prepared while rejecting the postal ballot papers as the Returning Officer - RW.2 has stated in his evidence that at the end of each round, the votes cast in favour of each party was being confirmed and no application was filed for recounting of postal ballot papers or alleging that the postal ballot papers had not been counted in accordance with law. The material on record as also the evidence of PWs.1 to 3 and RW.2 would clearly show that admittedly, no application for recounting was done when the counting of postal ballot papers was in progress and the endorsement issued by the Returning Officer as per Ex.P5, the same pertained to the application given for recounting by one Smt. Sudha Gowda, the counting agent of the original petitioner. The said witness has not been examined and the application for recounting filed by Smt. Sudha Gowda has not been produced and the endorsement - Ex.P5 would only show that since the applicant did not raise objection with regard to counting of postal ballot papers, which were counted in the presence of the counting agents before the declaration of the election result, the application for recounting has been rejected and Ex.P5 by itself in the absence of the evidence of Smt. Sudha Gowda, who had given the application for recounting of votes or production of the application given by Smt. Sudha Gowda for recounting of votes, the only inference that can be drawn is that the said application was given after declaration of counting of votes was over and respondent No.1 was declared to be elected from Kumta constituency. Therefore, it is clear that the original petitioner has failed to prove that he had complained during the process of counting of postal ballot papers of any violation of the Rules and the fact that they were not shown the rejected postal ballot papers. Therefore, the evidence of RW.2, who has spoken to about the counting of postal ballot papers in accordance with law, has to be accepted. On similar facts, when the difference of votes was only three, between the candidate, who was declared elected and the next candidate, who had filed the election petition, the Hon'ble Supreme Court in the case of MAHENDRA PAL Vs. RAM DASS MALANGER AND OTHERS ((2002) 3 SCC 457) has held that mere fact that small margin of votes would not by itself be a ground for recounting and proper grounds have to be made out for entitlement for recounting. In the said case, the election petitioner had secured 11657 votes and respondent No.1, who was declared elected had secured 11660 votes and it was only a margin of three votes and the Hon ' ble Supreme Court, after review of the provisions of Section 100(1)(d)(iii) and the earlier decision of the Hon ' ble Supreme Court has held as follows:-

> "12. The law on this aspect is well settled. While dealing with similar contention, this Court in R. Narayanan v. S. Semmalai held that election, being a technical matter, the authorities choose experienced persons to do the counting and take every possible care to see that the members of the staff do not commit any error. Moreover, the relief of re- counting cannot be accepted merely on the possibility of there being an error. The Court observed (at SCC p. 543, para 16), "it is well settled that such allegations must not only be clearly made but also proved by cogent evidence", The Court also held that the margin by which the appellant succeeded was very narrow. This was undoubtedly an important factor to be considered but would not by itself vitiate the counting of votes or justify re-counting by the Court. Thereafter the Court referred to earlier decisions and held (in para 26) thus: (SCC pp. 547-48)
>
> "The court would be justified in ordering re-count of the ballot papers only where:
>
> (1) The election petition contains an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded;

(2) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and

(3) The court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties. "

49. Similarly, in the case of SHRI JITENDRA BAHADUR SINGH Vs. SHRI KRISHNA BEHARI AND OTHERS (1969 (2) SCC 433), the Hon ' ble Supreme Court has laid down as follows:-

" 7. The importance of maintaining the secrecy of ballot papers and the circumstances under which that secrecy can be violated has been considered by this Court in several cases. In particular we may refer to the decisions of this Court in **Ram Sewak Yadav v. Hussain Kamil Kidwai and Others and Dr. Jagajit Singh v. Giani Kartar Singh.** These and other decisions of this Court and of the High Courts have laid down certain basic requirements to be satisfied before an election tribunal can permit the inspection of ballot papers. They are-

(1) that the petition for setting aside the election must contain an adequate statement of the material facts on which the petitioner relies in support of his case and

(2) the tribunal must be prima facie satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of the ballot papers in necessary.

8. The trial court was of the opinion that if an election petitioner in his election petition gives some figures as to the rejection of valid votes and acceptance of invalid votes, the same must be considered as an adequate statement of material facts. In the instant case apart from giving certain figures whether true or imaginary, the petitioner has not disclosed in the petition the basis on which he arrived at those figures. His bald assertion that he got those figures from the counting agents of the Congress nominee cannot afford the necessary basis. He did not say in the petition who those workers were and what is the basis of their information? It is not his case that they maintained any notes or that he examined their notes, if there were any. The material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words they must be such facts as to afford a basis for the allegations made in the petition. The facts stated in Paragraphs 13 and 14 of the election petition and in Schedule 'E' are mere allegations and are not material facts supporting those allegations. This Court in insisting that the election petitioner should state in the petition the material facts was referring to a point of substance and not of mere form. Unfortunately the trial court has mistaken the form for the substance. The material facts disclosed by the petitioner must afford an adequate basis for the allegations made.

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10. xxx. The election petition is silent as to the inspection of the ballot papers or whether the counting agents had noted down the serial number of those ballot papers or whether those agents raised any objection relating to the validity of those ballot papers; if so who those agents are and what are the serial numbers of the ballot papers to which each one of them advanced their objections. These again are the material facts required to be stated.

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12. The trial court correctly came to the conclusion that before an order of inspection of the ballot papers can be made it must be prima facie satisfied that in order to decide the dispute and to do complete justice between the parties, inspection of the ballot papers is necessary. It did say that it was so satisfied but it gave no reasons whatsoever as to how it came to be satisfied. A judge can be satisfied only on the basis of proof and not on the basis of mere allegations. There is absolutely no proof in this case to support the allegations on the basis of which the scrutiny of the ballot papers was prayed for. The trial court did not mention in its order even a single reason in support of its satisfaction as to the need for inspecting the ballot papers. Every judicial order must be based on reasons and those reasons must be disclosed in the order itself. Unfortunately the learned trial judge had this behalf have to be stated clearly in the election petition and then proved by cogent evidence. Undoubtedly, the onus to prove the allegation of irregularity, impropriety or illegality in the election process on the part of the Election Officer is on the election petitioner and not on the Election Officer, as held by the authorities below. In the present case, both the forums below have found that material facts were lacking in the election petition. Having held so, in our view, the election petition should have been dismissed on this short ground alone. In that view of the matter, the observation of the Election Tribunal, as affirmed by the High Court, that the Election Officer had failed to say anything regarding corrections and overwritings in Form 26, are neither factually nor legally sound."

The same principles have been reaffirmed by the Hon'ble Supreme Court in KALYAN SINGH CHOUHAN Vs. C.P. JOSHI (2011 AIR SCW 1061), wherein the Hon'ble Supreme Court has observed as follows:-

" 14. During the trial of an election petition, it is not permissible for the court to permit a party to seek a roving enquiry. The party must plead the material fact and adduce evidence to substantiate the same so that the court may proceed to adjudicate upon that issue. Before the court permits the re- counting, the following conditions must be satisfied:

(i) The Court must satisfied that a prima facie case is established.

(ii) The material facts and full particulars have been pleaded stating the irregularities in counting of votes;

(iii) A roving and fishing inquiry should not be directed by way of an order to recount the votes;

(iv) An opportunity should be given to file objection; and

(v) Secrecy of the ballot requires to be guarded.

(vide: Dr. Jagit Singh v. Giani Kartar Singh & Ors., AIR 1966 SC 773; Suresh Prasad Yadav v. Jai Prakash Mishra & Ors., AIR 1975 SC 376; M. Chinnasamy v. K.C. Palaniswamy and Ors., AIR 2004 SC 541; Chandrika Prasad Yadav v. State of Bihar & Ors., AIR 2004 SC 2036; Tanaji Ramchandra Nimhan v . Swati Vinayak Nimahan, AIR 2006 SC 1218; Gursewak Singh v. Avtar Singh & Ors., AIR 2006 SC 1791; and Baldev Singh v. Shinder Pal Singh & Anr., (2007) 1 SCC 341).

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24. Therefore, in view of the above, it is evident that the party to the election petition must plead the material fact and substantiate its averment by adducing sufficient evidence. The Court cannot travel beyond the pleadings and the issue cannot be framed unless there are pleadings to raise the controversy on a particular fact or law. It is, therefore, not permissible for the court to allow the party to lead evidence which is not in the line of the pleadings. Even if the evidence is led that is just to be ignored as the same cannot be taken into consideration."

51. If the finding arrived at by me is considered in the light of the principles laid down by the Hon'ble Supreme Court in the above said cases, it is clear that mere fact that the margin of votes between the elected candidate and petitioner, who has filed the election petition, is narrow would not by itself per se give rise to presumption that it is illegal and illegality has to be averred

and proved, which has not been done by the petitioner in the present case as already held by me and the petitioner is not entitled to recounting of votes as sought for in the election petition.

52. The only other allegation made in the election petition is that the hall in which counting of votes was done i.e., a class room in Dr. A. V. Baliga College, Kumta, was congested and counting of votes could not be done in accordance with law, is not substantiated and it has come in the cross-examination of the witnesses examined on behalf of the petitioner that whenever election is held to the legislative assembly, counting of votes would be arranged in A.V. Baliga ' s College, Kumta. Accordingly, **I answer Issue No.1 also against the election petitioner.**

53. The third prayer sought for in the Election petition with regard to declaring the petitioner as the returned candidate in case he secures maximum number of votes among, the contesting candidates after recounting, does not survive for consideration in view of my answer to Issue Nos. 1 and 2. Even otherwise, it is clear from the material on record that the original petitioner has died and his wife has come on record and has continued the election petition. Accordingly, I hold that the election petition is devoid of merit and pass the following Order:-

The Election petition is dismissed with costs.

Sd/-

JUDGE

FORMAL ORDER UNDER RULE 19 OF THE ELECTION PETITION PROCEEDURE RULES, 1967 (KARNATAKA)

IN THE HIGH COURT OF KARNATAKA, AT BANGALORE

DATED THIS ON FRIDAY 15TH DAY OF APRIL, 2011

BEFORE

THE HON'BLE MR. JUSTICE Y.G. SABHAHIT

ELECTION PETITION NO. 1 OF 2008

BETWEEN

MOHAN KRISHNA SHETTY SINCE DECEASED
AGED ABOUT 55 YEARS
S/O KRISHNA SHETTY
'SAHANA', NELLIKERI,
KUMTA, UTTARA KANNADA DISTRICT,

SINCE DECEASED SUBSTITUTED
AS PER COURT ORDER DATED 22-01-2010 BY

SMT SHARADA SHETTY
W/O MOHAN SHETTY
AGED ABOUT 46 YEARS
OCC : BUSINESS
R/AT : 'SAHANA', NELLIKERI,
KUMATA, UTTARA KANNADA DISTRICT, ... PETITIONER

(BY SRI JAYAKUMAR S. PATIL, SENIOR ADVOCATE FOR SRI R G HEGDE - ADVOCATE)

AND

1. DINAKAR KESHAV SHETTY
AGE MAJOR, KOPPALAKARVADI
KUMTA, UK DISTRICT

2. G NATHKUMAR GOUDA
AGE MAJOR
MELINAKERI
PO GOKARNA
KUMTA TALUK

3. SHASHIBHUSHAN HEGDE
   AGE MAJOR
   294/5, OLD FISH MARKET ROAD
   KUMTA UK DISTRICT

4. GANESH GANAPATHI HEGDE
   AGE MAJOR, MATHRUCHAYA
   BEHIND CANARA HEALTH CARE CENTRE
   BAGGON, KUMTA TALUK

5. TIPPAYYA NAGAPPA NAYAKA.
   AGE MAJOR, MATHOSHRI
   KALABAGA, KUMTA TALUK

6. BANDARI SADANANDA ANNAPPA
   AGE MAJOR, KASABA
   KARKIKODI
   HONNAVAR TALUK

7. SHET SAVITRI SHRIDHAR
   AGE MAJOR
   HALE HERAVATTA
   KALABAGA POST
   KUMTA TALUK

8. THE RETURNING OFFICER
   78-KUMTA ASSEMBLY CONSTITUENCY AND
   THE ASSISTANT COMMISSIONER
   KUMTA DIVISION, KUMTA
   UK DISTRICT

9. THE DISTRICT ELECTION OFFICER
   AND THE DEPUTY COMMISSIONER
   UK DISTRICT KARWAR ... RESPONDENTS

(RESPONDENTS 8 & 9 ARE DELETED V/O DATED 09.04.2010)

(BY SRI NANJUNDA REDDY, SR ADV. FOR
SRI VISHNU D BHAT, ADV. FOR R1,
DIWAKAR & ASSTS. ADV., FOR R3, R2,
R4 TO R7 ARE SERVED, R8 AND R9 ARE
DELETED AS PER THE COURT ORDER
DATED 12.04.2010)

This Election Petition was presented under Section 81 of the Representation of People Act, 1951, before Registrar (Judicial) on 01.07.2008 by the petitioner - candidate Sri. Mohan Krishna Shetty with his Counsel Sri R G Hegde, challenging the Election of Respondent No.1 to the Kumta Legislative Assembly Constituency from 78 at the Election held on 16.05.2008 praying to;

1. Declare that the declaration made by the Returning Officer, as contained in Annexure-A declaring the first respondent as the returned candidate, as void on ground of Sec 100(d) (iii) and (iv) of Representation of the People Act 1951.
2. Order for re-counting of votes polled at the elections held on 16.05.2008, 78-Kumta Assembly Constituency of Legislative Assembly of Karnataka.

3. Declare the petitioner as the returned candidate, in case he polls the maximum number of votes among the contesting candidates after re-counting as per Sec 101 (a) of Representation of the People Act 1951.
4. Take into account the tendered ballot papers in favour of the petitioner in whose favour it was cast by excluding the vote initially cast by the person other than the genuine voter from the number of votes of the candidate in whose favour it was cast .
5. Grant such other relief or reliefs that this Hon' ble Court may deem fit proper in the circumstances of the case and in the interest of Justice.

It is ordered and decreed that, this Election Petition was assigned to Hon'ble Mr. Justice VGSJ and posted before the Hon'ble Election Judge for orders U/R 10 of the Election Petition procedure Rule Read With Section 86 of the Representation of People Act 1951, at first Issues then framed on 21.11.2008 and on 29.12.2008 Election Petitioner was dead. Smt. Sharada W /0 Mohan Shetty substituted the deceased petitioner as per the Court order dated 22.01.2010. On 17.09.2010 the case was posted for evidence. On 04.11.2010 evidence was closed. Then the matter was posted for arguments on 28.01.2011. On 04.03.2011 the matter was reserved for Judgement and on 15.04.2011 the Hon'ble Court pronounced the Judgement in the presence of Sri R G Hegde- Advocate for Petitioner, Sri Vishu D Bhat-Advocate for Respondent No. 1, Diwakar and Associates - Advocate for Respondent No.3. holding that the Election Petition was devoid of merits and Hon'ble Court dismissed the Election Petition with costs.

The operative portion of the order reads as follows:

"Accordingly, I hold that the election Petition is devoid of merit and pass the following order.-

'The Election Petition is dismissed with costs'",

For the reasons stated in the impugned order dated 15.04.2011, it is ordered and decreed that the Election Petition be and the same is hereby dismissed with costs.

It is further ordered and decreed that the Petitioner aforesaid do pay to the Respondent No.1 aforesaid the some of Rs. 7,550/-(Seven Thousand Five Hundred and Fifty Rupees) being the amount of the costs incurred by the latter in this petition.

Given under my hand and seal of this Court, this the 15.04.2011.

Registrar (Judicial)

ELECTION PETITION NO. 1/2008

MEMORANDUM OF COSTS INCURRED IN THE ELECTION PETITION

		By the Appellant		By the Respondent-I	
		Rs.	P.	Rs.	P.
Court-fee Power of Attorney	…			--	--
Court-fee on Processes	…			50	00
Court-fee Copies of Decree and Judgement	…				
Advocate's Fee	…			--	--
Cost of Adjournment (4,500 + 3,000)	…			7,500	00
Fees for Copying	…				
Special Copying Charges	…				
Fees for Translation	…				
Cost of Remand	…				
Printing Charges (Paper Books)	…				
	…				
Total	…			7,550	00

Assistant Registrar

Advocate for Appellant **Advocate for Respondent**

BY ORDER,

R.K. SRIVASTAVA,

PRINCIPAL SECRETARY

ELECTION COMMISSION OF INDIA

PR-23

PERSONNEL AND ADMINISTRATIVE REFORMS, SECRETARIAT (ELECTIONS) NOTIFICATION NO DPAR 01 CHUANA 2008 (P), BANGALORE DATED 24TH AUGUST, 2011

The accompanying Order No. 76/KT-LA/2008, dated:8th August, 2011 of the Election Commission of India is published for general information.

By Order and in the name of the Governor of Karnataka,

P.T. KULKARNI,

Deputy Chief Electoral Officer and

Ex-Officio Deputy Secretary to Govt.,

D.P.A.R. (Elections).

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 76/KT-LA/2008 Dated: 8th August, 2011

17 Shravana, 1933 (Saka)

ORDER

Whereas, the Election Commission of India is satisfied that each of the contesting candidate specified in column 3 of the Table below at the General Election to the Legislative Assembly, 2008 from Karnataka Assembly Constituency of specified in column 2 against their names have failed to lodge the account of their election expenses in manner as shown in column 4 of the said Table as required by the Representation of the People Act, 1951 and the Rules made there under;

And whereas, the said candidates have either not furnished any reason or explanation for the said failure even after receiving Election Commission's notice, and the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column 3 of the Table below to be disqualified for being chosen as and for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State or Union Territory for a period of three years from the date of this order:-

TABLE

Sl. No.	Particulars of Election	Sl. No.& Name of Assembly Constituency	Name & Address of Contesting Candidate	Reasons for Disqualification
1	2	3	4	5
1	General Elections to Karnataka Legislative Assembly, 2008	45-Gulbarga Uttar	Sh. Chandrakant R. Kalagi At Post: 14/5, Hipparga (Bag) Tq.: Basavakalyan, Dist: Bidar	Failed to lodge any account of his election expenses.
2	General Elections to Karnataka Legislative Assembly, 2008	79-Bhatkal	Sh. Shetty Girisha Lokeshwar Po: Bengre, Tq: Bhatkal	Failed to lodge any account of his election expenses in the manner
3	General Elections to Karnataka Legislative Assembly, 2008	79-Bhatkal	Sh. S.M. Zakriya, Sabina House, N.H 17, Tq: Bhatkal	Failed to lodge any account of his election expenses.

Sl. No.	Particulars of Election	Sl. No.& Name of Assembly Constituency	Name & Address of Contesting Candidate	Reasons for Disqualification
1	2	3	4	5
4	General Elections to Karnataka Legislative Assembly, 2008	80-Sirsi	Sh. Ramanatha Hegde At : Kulihaklu, PO : Mattighatta Tq: Sirsi - 581403 (U.K)	Failed to lodge any account of his election expenses in the manner
5	General Elections to Karnataka Legislative Assembly, 2008	80-Sirsi	Sh. Kanade Ramadas Venkappa, Bapuji Nagar, Yellapur Road, Sirsi-581402 (U.K)	Failed to lodge any account of his election expenses.
6	General Elections to Karnataka Legislative Assembly, 2008	81-Yellapur	Sh. Suresh Ningappa Pujar At: Kirawatti, Tq : Yellapur	Failed to lodge any account of his election expenses in the manner.
7	General Elections to Karnataka Legislative Assembly, 2008	133-Tumkur Rural	Syed Mukbul Ahamed, 13th Cross, Near Nimhra Masjid, P.H. Colony Tumkur	Failed to lodge any account of his election expenses.
8	General Elections to Karnataka Legislative Assembly, 2008	133-Tumkur Rural	Sh. Kannadakanda Ramamurthy.H, (Ramamurthy Gowda) No. 27, 6th Main Road, H.V.R. Layout, Govindarajanagara, Bangalore.	Failed to lodge any account of his election expenses.
9	General Elections to Karnataka Legislative Assembly, 2008	137-Pavagada (SC)	Sh. Kenchappa, S/o Bheemappa Doddenahalli Pavagada Tq.	Failed to lodge any account of his election expenses.
10	General Elections to Karnataka Legislative Assembly, 2008	137-Pavagada (SC)	Sh. P.A. Govindaraju, S/o P. Anjanappa Raingauge Extension, Pavagada Tq.	Failed to lodge any account of his election expenses.
11	General Elections to Karnataka Legislative Assembly, 2008	137-Pavagada (SC)	Sh. Thavarenaika, S/o Ganiyanaika Davadabetta, Pavagada Tq.	Failed to lodge any account of his election expenses.
12	General Elections to Karnataka Legislative Assembly, 2008	137-Pavagada (SC)	Sh. S.G. Srinivasa, S/o Giriyappa Shailapura, Pavagada Tq.	Failed to lodge any account of his election expenses.
13	General Elections to Karnataka Legislative Assembly, 2008	186-Malavalli (SC)	Sh. M. Prasanna, S/o M. Channaiah, Mallinatha pura & Post Malavalli Taluk	Failed to lodge any account of his election expenses.

Sl. No.	Particulars of Election	Sl. No.& Name of Assembly Constituency	Name & Address of Contesting Candidate	Reasons for Disqualification
1	2	3	4	5
14	General Elections to Karnataka Legislative Assembly, 2008	186-Malavalli (SC)	Sh. H.G. Somashekar, S/o Late Gangadariah, Huskur Village & Post Malavalli Taluk	Failed to lodge any account of his election expenses.
15	General Elections to Karnataka Legislative Assembly, 2008	187-Maddur	Sh. Shivaramaiah, S/o Late Kenchegowda, Shankarapura, Maddur Taluk	Failed to lodge any account of his election expenses.
16	General Elections to Karnataka Legislative Assembly, 2008	189-Mandya	Sh. R. Yogesh @ Shambugowda, No. 4522, 10th cross, Shankaranagar, Mandya.	Failed to lodge any account of his election expenses.
17	General Elections to Karnataka Legislative Assembly, 2008	190-Srirangapatna	Sh. Chandrashekarappa. K. S/o Kullegowda, 94A, 6th Main Road, Nagendra Block, Banashankari 3rd Stage, Bangalore-50.	Failed to lodge any account of his election expenses.
18	General Elections to Karnataka Legislative Assembly, 2008	194-Arasikere	Sh. B.N. Ramesh,S/o Ningappa, Valehalli, Bairapura (V. Bairapura) Nagasamudra post, Arsikere Taluk	Failed to lodge any account of his election expenses.
19	General Elections to Karnataka Legislative Assembly, 2008	197-Holenarsipura	Sh. K.H. Sathish, S/o Hombaiah, Jodikrishnapura Village, Koravanagal Post, Dudda Hobli, Hossan Taluk	Failed to lodge any account of his election expenses.
20	General Elections to Karnataka Legislative Assembly, 2008	197-Holenarsipura	Sh. N. Shivaswamy, S/o H. NIngegowda, Ullau Village, Bangalore North Taluk	Failed to lodge any account of his election expenses.
21	General Elections to Karnataka Legislative Assembly, 2008	203-Mangalore City South	Sh. Dharmendra K Kumara Residency, 2nd Floor, Ladyhill, Mangalore	Failed to lodge any account of his election expenses.

BY ORDER,

R.K. SRIVASTAVA,

PRINCIPAL SECRETARY

ELECTION COMMISSION OF INDIA

PERSONNEL AND ADMINISTRATIVE REFORMS, SECRETARIAT (ELECTIONS)
NOTIFICATION NO. DPAR 01 CHUANA 2008 (P), BANGALORE,
DATED 24TH AUGUST, 2011

The accompanying Order No. 76/KT-LA/2010(Bye), dated:8th August, 2011 of the Election Commission of India is published for general information.

By Order and in the name of the Governor of Karnataka,
P.T. KULKARNI,
Deputy Chief Electoral Officer and
Ex-Officio Deputy Secretary to Govt.,
D.P.A.R. (Elections).

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 76/KT-LA/2010 (Bye) Dated: 8th August, 2011
17 Shravana, 1933 (Saka)

ORDER

Whereas, the Election Commission of India is satisfied that each of the contesting candidate specified in column 4 of the Table below at the bye-election to the Legislative Assembly, 2008 from Karnataka Assembly Constituency of specified in column 3 against their names have failed to lodge the account of their election expenses in manner as shown in column 5 of the said Table as required by the Representation of the People Act, 1951 and the Rules made there under;

And whereas, the said candidates have either not furnished any reason or explanation for the said failure even after receiving Election Commission's notice, and the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column 4 of the Table below to be disqualified for being chosen as and for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State or Union Territory for a period of three years from the date of this order:-

TABLE

Sl. No.	Particulars of Election	Sl. No.& Name of Assembly Constituency	Name & Address of Contesting Candidate	Reasons for Disqualification
1	2	3	4	5
1	Bye Elections to Karnataka Legislative Assembly, 2010	44-Gulbarga Dakshin	Sh. Ashok R. Dodmani E-171, At Post, Heerapur TQ & Dist: Gulbarga	Failed to lodge any account of his election expenses.
2	General Elections to Karnataka Legislative Assembly, 2010	44-Gulbarga Dakshin	Sh. S.M. Subhan Hussaini H.No.11-1041/34/JH, Iqbal Colony, Jeelanabad, Gulbarga	Failed to lodge any account of his election expenses.

BY ORDER,
R.K. SRIVASTAVA,
PRINCIPAL SECRETARY
ELECTION COMMISSION OF INDIA

PR-24